IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10187 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SHANKAR KACHRU PANCHAL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 10187 of 2001

MS SUBHADRA G PATEL for Petitioner No. 1

MR SS PATEL AGP for Respondents No. 1-3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 24/12/2001

ORAL JUDGEMENT

By means of filing this petition, the petitioner has challenged the order of detention dated 9/6/2001 passed by the Commissioner of Police, Ahmedabad City.

2. It is a settled principle of law that in order to bring a person within the expression "dangerous person" as defined in clause (c) of section 2 of the Gujarat Prevention of Anti-Social Activities Act, 1985 (for short `the Act of 1985'), there should be positive materials to indicate that such person is habitual of committing or attempting to commit or abetting the commission of offences which are punishable under Chapter XVI or XVII of Chapter V of the Arms Act and that single or isolated act falling under the said Chapters cannot be characterised as a habitual acts as envisaged in section 2(c) of the PASA Act. Further, besides a person being a dangerous person, his activities should also fall within the ambit of expression `public order'. A distinction has to be drawn between the `law and order' and `maintenance of public order'. A reference may be made of M.J.Shaikh V. M.M. Mehta, Commissioner of Police & Ors., reported in 1995 (2) GLR 1268.

3. I have heard learned advocate for the petitioner and also perused the material on record. According to learned advocate for the petitioner, the detaining authority has passed the detention order relying upon the three offences registered against the detenu under Sec.454, 380 and 114 of Indian Penal Code and also relying upon the statement of the witnesses recorded by the detaining authority. The thereafter, the petitioner made a detailed representation to the concerned authorities on 1/10/2001, which has been received by the authority and rejected and the same has been communicated to the petitioner vide letter 19/10/2001 informing the petitioner that his representation has been rejected on 12/10/2001, and the same has been received by the petitioner - detenu through jail on 29/10/2001. The learned advocte for the petitioner tenders the aforesaid reply received by him through jail. The same be taken on record. Therefore, according to the learned advocate for the petitioner there is a delay in considering the representation and communicating the rejection of the representation to the detenu, which is unconstitutional. In support of her say, the learned advocate for the petitioner has placed reliance upon the decision of the Hon'ble Supreme Court reported in AIR 1981 SC 1126, in which the Honourable Supreme Court has held as under :-

> "We would emphasise that it is the duty of the State to proceed to determine representations of the character above mentioned with the utmost expedition, which means that the matter must be taken up for consideration as soon as such a representation is received and dealt with

> continuously (unless it is absolutely necessary to wait for some assistance in connection with it) until a final decision is taken and communicated to the detenu. This not having been done in the present case we have no option but to declare the detention unconstitutional. We order accordingly, allow the appeal and direct that the appellant be set at liberty forthwith."

4. Since the detaining authority has not decided the representation of the petitioner and not communicated the decision of the representation of the petitioner promptly, in view of the above judgment relied upon by the learned advocate for the petitioner, the order of detention is illegal and the same cannot be sustained. Learned advocate for the petitioner does not press any other points.

5. In view of the above, the petition is allowed. The order of detention dated 9/6/2001 passed against the detenu is hereby quashed and set aside. The detenu namely Shankar Kachru Panchal is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no order as to costs. D.S. Permitted.

(R.P.DHOLAKIA,J.)

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